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No. 1338

In the

Supreme Court of the United States

OCTOBER TERM, 1965.

AUTOMATIC ELECTRIC COMPANY,

Petitioner,

vs.

TECHNOGRAPH PRINTED CIRCUITS, LTD., and TECHNOGRAPH PRINTED ELECTRONICS, INCORPORATED,

Respondents.

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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The Scheffer Press, Inc.—ANdover 3-6850

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THE "QUESTIONS PRESENTED" CLEARLY ARISE ON THIS RECORD

Question 1 (Pet., 2) is precisely in accord with the position taken by petitioner in both the District Court and the Court of Appeals. The printed Appendix before the Court of Appeals shows that petitioner's position in the District Court was: "This Court can and should consider this case on motion for summary judgment and should reach the same decision as the Maryland District Court, all necessary facts being supported in documents before the court and those documents having already been

carefully scrutinized and analyzed by the Maryland Court." (Appendix to Appellee's Brief, p. 31).

Question 2 (Pet., 3) arises because the Court of Appeals found an "issue of fact" in this case based upon a "sharp and bitter dispute concerning the factual determinations" in *Bendix* (356 F.2d 442, 447). Instead of giving the proper "great weight" to the *Bendix* decision, the Court of Appeals held "the inferences . . . must be viewed in the light most favorable to the party opposing the motion." and "all doubts as to the existence of a genuine issue as to a material fact" must be resolved "against the party moving for summary judgment." (356 F.2d 442, 446-47). The court restricted the doctrine of comity in stating: "The Bendix decision may by comity be given great weight by the district court *after it hears testimony in a trial of the instant case on the merits.*" (Emphasis added) (356 F.2d 442, 449) and this sharply focuses the very point of Question 2. It is an erroneous limitation of the doctrine of comity which transcends the issues in this particular case. Resolution of the question here will free the public of an onerous burden and prevent complete relitigation of invalid patents again and again.

THIS CASE IS PROPER SUBJECT OF REVIEW BECAUSE THE ISSUE IS FUNDAMENTAL

Respondents suggest that the decision of the Court of Appeals was interlocutory and presents no conflict of decisions and thus oppose the petition. While the District Court's decision would have finally disposed of the litigation, the remand for trial by the Court of Appeals does not.

It was in precisely these circumstances that certiorari was granted in *Land* v. *Dollar*, 330 U.S. 731, 734 (n. 2) (1947) where this Court stated: "Although the judgment below was not a final one, we considered it appropriate for review because it involved an issue 'fundamental to the further conduct of the case.'" Accord: *Larson* v. *Domestic & Foreign Corp.*, 337 U.S. 682, 685 (1949); *United States* v. *General Motors Corp.*, 323 U.S. 373, 377 (1945). The essence of the public interest to be served through this petition requires that it arise in an interlocutory proceeding.

The petition should be granted.

Respectfully submitted,

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